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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Scott Douglas Nordstrom,

10 Plaintiff,

11 v.

12 Charles L. Ryan, Director of the Arizona  
13 Department of Corrections; James O'Neil  
14 Warden, ASPC Eyman; and Staci Fay,  
Deputy Warden, Browning Unit,

15 Defendants.  
16

No. CV15-02176-PHX-DGC

**ORDER**

17 Before the Court is John E. Sansing's motion to enforce a settlement agreement  
18 between Plaintiff Scott Nordstrom and Defendants Arizona Department of Corrections  
19 ("ADOC") and others. Doc. 117. The motion is fully briefed, and oral argument has not  
20 been requested. For the following reasons, the Court will deny the motion.

21 **I. Background.**

22 In October 2015, Plaintiff Nordstrom, a death-sentenced inmate in state custody,  
23 brought an action against Defendants for violations of the Eighth and Fourteenth  
24 Amendments related to death row conditions. Doc. 1. Having already planned to make  
25 death row inmates eligible for reclassification to close-custody housing, ADOC settled  
26 with Plaintiff on March 3, 2017 ("the Settlement"). Doc. 39. The Settlement provided:

27 [ADOC will] eliminate the existing permanent classification of inmates with  
28 a death sentence to maximum custody units, and [] permit death row inmates  
to seek and obtain re-classification to close custody status based on the

1 criteria currently available to non-death sentenced maximum custody  
2 inmates[;]

3 Death sentenced inmates who are re-classified to close custody status may  
4 be housed as a group, rather than with non-death sentenced inmates,  
5 provided, however, that nothing herein shall alter existing protocols and  
6 procedures relating to protective custody assignments.

7 [The] conditions and restrictions of confinement, and quality of facilities,  
8 utilized for close custody housing for death sentenced inmates shall be  
9 equivalent to that of existing close custody housing facilities used for non-  
10 death sentenced inmates.

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12 Plaintiff's current disciplinary record meets the criteria for reclassification to  
13 close custody and he shall be reclassified to such status and transferred to  
14 such housing upon adoption of the above referenced amendments, within one  
15 hundred twenty (120) days of this stipulation. Nothing in this stipulation  
16 shall be interpreted to require Plaintiff to remain classified as a close custody  
17 inmate if he no longer meets the requirements for close custody  
18 classification.

19 *Id.* at 2 ¶¶ 1-3, 6. Based on this settlement agreement, the Court dismissed Plaintiff's  
20 action, incorporated the Settlement terms in its order, and retained jurisdiction to enforce  
21 the agreement. Doc. 45.

22 In September 2018, Plaintiff Nordstrom filed a motion to enforce the settlement  
23 agreement, asserting that Defendants failed to provide other inmates with the “‘conditions  
24 and restrictions of confinement, and quality of facilities’ that are ‘equivalent to that of  
25 existing close custody housing facilities used for non-death sentenced inmates.’” Doc. 60  
26 at 5. The Court denied the motion, holding that Plaintiff Nordstrom could not seek relief  
27 on behalf of other inmates because he “did not bring this case as a class action, and the  
28 Settlement was only between Plaintiff and Defendant.” Doc. 72 at 6.

John E. Sansing has never been a party to this action, but nonetheless seeks relief  
under the Nordstrom settlement. He asserts that he qualifies for close custody status, and  
that Defendants have breached the Settlement by denying him an interrelation phone call

1 with his wife on the basis of his death-sentenced status. Doc. 117 at 2. Sansing sought  
2 relief through ADOC's grievance process, requesting that the policy be changed to allow  
3 all death-sentenced inmates to make and receive interrelation phone calls if they otherwise  
4 qualify based on their institutional risk score and custody status. *Id.* at 2. In response,  
5 ADOC scheduled the phone call between Sansing and his wife (who is also incarcerated)  
6 and stated that no further action would be taken to amend the policy. Doc. 117 at 16.

## 7 **II. Jurisdiction.**

8 "In general, '[e]nforcement of [a] settlement agreement . . . whether through award  
9 of damages or decree of specific performance, is more than just a continuation or renewal  
10 of the dismissed suit, and hence requires its own basis for jurisdiction.'" *Alvarado v. Table*  
11 *Mountain Rancheria*, 508 F.3d 1008, 1017 (9th Cir. 2007) (quoting *Kokkonen v. Guardian*  
12 *Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994)). But "a federal court has jurisdiction to  
13 enforce a settlement agreement in a dismissed case when the dismissal order incorporates  
14 the settlement terms, or the court has retained jurisdiction over the settlement contract" and  
15 a party alleges a violation of the settlement. *Id.* Under those circumstances, a breach of  
16 the agreement is a violation of the court's order and the court has jurisdiction to enforce  
17 the agreement. *Kokkonen*, 511 U.S. at 381. Where an order grants relief to a nonparty, the  
18 Court may enforce the order using the same procedures available to a party. *See* Fed. R.  
19 Civ. P. 71. Because the Court's order in this case incorporated the terms of the Settlement  
20 and retained jurisdiction (Doc. 45), the Court has jurisdiction to hear Sansing's motion to  
21 enforce the Settlement if the order grants him relief as a nonparty.

## 22 **III. Legal Standard.**

23 In Arizona, "settlement agreements, including determinations as to the validity and  
24 scope of release terms, are governed by general contract principles." *Emmons v. Sup. Ct.*  
25 *for Cty. of Maricopa*, 968 P.2d 582, 585 (Ariz. Ct. App. 1998); *Knudsen v. C.I.R.*, 793 F.3d  
26 1030, 1035 (9th Cir. 2015); *see Adams v. Johns-Manville Corp.*, 876 F.2d 702, 709 (9th  
27 Cir. 1989) (a motion to enforce a settlement agreement is essentially "an action to  
28 specifically enforce a contract"). Interpretation of a contract is generally a matter of law,

1 *see Powell v. Washburn*, 125 P.3d 373, 375 (Ariz. 2006), but whether a party has breached  
2 the contract is a question for the trier of fact, *see Walter v. F.J. Simmons*, 818 P.2d 214,  
3 218-19 (Ariz. Ct. App. 1991).

#### 4 **IV. Standing.**

5 Defendants argue that Sansing lacks standing and cite to the Court's previous order  
6 finding that seven death-sentenced inmates lacked third-party standing to enforce the  
7 Settlement. Doc. 110. The seven inmates affected by that order asserted standing under  
8 Rule 71 and the Ninth Circuit's decision in *Hook v. Ariz. Dep't of Corr.*, 972 F.2d 1012,  
9 1014 (9th Cir. 1992). *Id.* at 4. Sansing does not assert standing on those bases, but he does  
10 state that he is a beneficiary to the Settlement. Doc. 117 at 1.

11 For a person to obtain relief as a third-party beneficiary of a contract in Arizona, the  
12 intent to benefit the person must be found in the contract itself. *Norton v. First Fed.*  
13 *Savings*, 624 P.2d 854, 856 (1981) (citing *Irwin v. Murphey*, 302 P.2d 534 (1956)). The  
14 contemplated benefit must be both intentional and direct. *Id.* It is not enough that a  
15 contract may operate to a person's benefit – it “must appear that the parties intended to  
16 recognize the [person] as the *primary* party in interest and as privy to the promise.”  
17 *Sherman v. First Am. Title Ins.*, 38 P.3d 1229, 1232 (Ariz. Ct. App. 2002) (citation omitted)  
18 (emphasis in original); *Tanner Cos. v. Ins. Mktg. Servs., Inc.*, 743 P.2d 951, 953 (Ariz. Ct.  
19 App. 1987) (stating a party may not recover as a third party beneficiary “if it is merely an  
20 incidental beneficiary . . . rather than one for whose express benefit the [contract] was  
21 made”). Whether a person is an incidental or direct beneficiary is a question of contract  
22 construction for the Court. *Maganas v. Northrup*, 663 P.2d 565, 567 (1983).

23 The Court cannot conclude that the parties to the Settlement intended to recognize  
24 Sansing as the primary party in interest and as privy to the Settlement. *Sherman*, 38 P.3d  
25 at 1232. The contract does not name Sansing or indicate that he is an intended direct  
26 beneficiary, and Plaintiff Nordstrom did not bring this case as a class action or as a suit on  
27 behalf of other inmates. Further, the Court did not enter a consent decree after finding  
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1 broad constitutional or statutory violations; the Court simply accepted a settlement  
2 negotiated between the parties to this case.

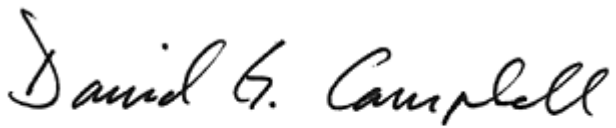
3 The Settlement specifically provides relief for Plaintiff Nordstrom, who clearly was  
4 the primary party in interest and the recipient of the Settlement guarantee. *Basurto v. Utah*  
5 *Const. & Mining Co.*, 485 P.2d 859, 863 (Ariz. Ct. App. 1971). Sansing is an incidental  
6 beneficiary, not a primary party in interest and privy to the Settlement.

7 **V. Conclusion.**

8 Sansing does not have standing as an intended third-party beneficiary to enforce the  
9 Settlement, and the Court will deny his motion. Nothing in the Court's order should be  
10 construed as ruling on the merits of Sansing's allegations of unequal treatment, which, if  
11 viable, must be asserted in a separate lawsuit.<sup>1</sup>

12 **IT IS ORDERED** that the motion to enforce the settlement (Doc. 117) is **denied**.

13 Dated this 1st day of October, 2019.

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17 David G. Campbell  
18 Senior United States District Judge  
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27 <sup>1</sup> Defendants also assert that even if Sansing had standing to enforce the agreement,  
28 his claim is moot because ADOC granted his request for an interrelation phone call.  
Docs. 117 at 16, 118. The Court disagrees because Sansing is seeking amendment to the  
policy on interrelation phone calls, not the ability to make one call. Doc. 117 at 1-3.